***THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY**

W.P.No. 16893 of 2004

% 29-12-2004

G. Sankara Rao

..... Petitioner

Vs.

$ 1. The Assistant Commissioner, Endowments Department, Vijayawada and others

… Respondents

! Counsel for the petitioner : Sri Kanakamedala Ravindra Kumar

^ Counsel for Respondent No.1 : G.P.for Endowments

Counsel for Respondents 2 to 4: Smt. N. Indrani

<Gist :

>Head Note :

?

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 16893 of 2004

Between:

G.Sankara Rao, S/o Subbaiah,
R/o Kavuluru Village, G.Konduru Mandal, Krishna District

..... PETITIONER

AND

1 The Assistant Commissioner, Endowments Department, Vijayawada, Krishna District
2 The Executive Officer, Sri Santhanal Venu Gopala & Anjaneya

Swamyvari Devasthanam, Kavuluru Village, G.Konduru Mandal,

Krishna District
3 The Person-in- Management, Sri Santhana Venu Gopala & Anjaneya

Swamy Vari Devasthanam, Kavuluru Village, G.Konduru Mandal,

Krishna District
4 The Board of Trustees, Sri Santhana Venu Gopala & Anjaneya

Swamy vari Devasthanam, Kavuluru Mandal, G.Kondurur Mandal,

Krishna District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or direction more particularly, one in the nature of Writ of Mandamus declaring the impugned proceedings of the 1st Respondent vide R.C.No.D.Dis.No.A1/531/2004/Dated 16-09-2004 proposing to direct the Assistant Commissioner, Endowments Department, Vijayawada, to resume the land on 20-09-2004 to an extent of Ac.17.73 Cts situated in R.S.No.276, Kavuluru Village, G.Konduru Mandal, Krishna District, to conduct public auction on the same without determining the lease hold rights of the Petitioner as per law, as highly illegal, arbitrary and in violation of the principles of natural justice, in violation of Article 21 of the Constitution of India and consequently set aside the same.

Counsel for the Petitioner:MR.KANAKAMEDALA RAVINDRA KUMAR

Counsel for the Respondent No.1: GP FOR ENDOWMENTS

Counsel for Respondents 2 to 4 : Smt. N. Indrani

The Court at the stage of admission made the following ORDER:

Petitioner is the cultivating tenant in respect of Ac.17.73 cents of land in survey No.276 of Kavuluru village, G. Konduru mandal, Krishna district. The land belongs to Sri Santhana Venu Gopala Swamy and Sri Anjaneya Swamy Varla Devasthanam. He claims to have emerged as the successful bidder in the auction, held on 12.04.1990 for the purpose of granting leasehold rights over

the land, for a sum of Rs.6,400/- per year. According to him, the lease was being extended from year to year and that he made an application to the Trust Board of the Devasthanam on 20.05.2003 requesting them to renew the lease for another three years, by offering the lease amount at Rs.25,000/- per year. He feels aggrieved by the notification dated 16.09.2004, whereunder the first respondent proposed to conduct auction of the leasehold rights of the land on 20.09.2004.

The petitioner contends that out of Ac.17.00, only Ac.8.00 of land is fit for cultivation and even for developing the same, he spent huge amounts. He submits that the Trust Board of the Devasthanam has already recommended for continuance of his lease and that there is no justification on the part of the first respondent in proposing to conduct the auction of the leasehold rights. He claims to have raised the crops over the land during the current season.

A counter-affidavit is filed by the first respondent, the Assistant Commissioner of Endowments, Vijayawada. It is stated that the lease in favour of the petitioner stood terminated by operation of Section 82 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short 'the Act') and that the petitioner has no right to continue over the land. It is also stated that W.P.No.12991 of 2004, filed by the petitioner, was disposed of on 17.08.2004 leaving it open to the petitioner to make an application for declaring him as landless poor person, whereas no such relief was claimed by the petitioner, obviously because he is not entitled for the same.

The first respondent also stated that the possession of the land was taken from the petitioner on 20.09.2004 at 09.00 a.m. and it was handed over to the Person-in-Management of the Temple. In the auction held for grant of leasehold rights, eight members are said to have participated by paying the E.M.D. of Rs. 30,000/- and that one Sri B. Bhaskara Rao has emerged as the highest bidder for a sum of Rs.1,99,000/- per year. Stating these facts, he pleads for vacating the interim orders as well as the dismissal of the writ petition.

Sri K. Ravindra Kumar, leaned counsel for the petitioner, submits that the petitioner was granted the lease for the agricultural lands in the year 1990 through the process of auction and there was no basis or justification for the respondents, to conduct auction once again when the petitioner is willing to pay

a sum of Rs.25,000/- per year. He also contends that the representation of the petitioner for extension of lease is pending with the respondents and they cannot conduct auction without disposing of the same.

Learned Government Pleader for Endowments and learned standing counsel for Devasthanam, on the other hand, submit that once the lease in favour of the petitioner stood terminated by operation of law, he is not entitled to continue as lessee over the land. They also submit that the Government framed the Rules for the purpose of enforcing Section 82 of the Act and according to Rule 8 of the same, the leasehold rights of such lands are to be granted only on the basis of an open auction and not otherwise. According to them, the Devasthanam was put to great loss for all these years on account of the unauthorized continuance of the petitioner over the land.

The petitioner was granted lease in respect of the land, by the Devasthanam, way back in the year 1990. Though Section 82 of the Act provided for termination of leases over agricultural lands belonging to religious institutions and Endowments, it could not be given effect to, in view of the Judgment of this Court striking of the said provision. Recently, the Supreme Court reversed the Judgment of this Court and upheld the validity of Section 82. The section was further amended, through Act No.27 of 2002. Now there is no impediment for enforcing that provision. The Legislature protected the interests of landless poor persons, as defined under the explanation to Section 82, by providing for certain concessions to them.

The Government framed Rules in G.O.Ms.No.379 Revenue (End-I) Department, dated 11.03.2003, for the purpose of determination of status of existing tenants as landless poor and prescribed the procedure to be adopted for granting leases. Rule 8 thereof, mandates that grant of leasehold rights by such institutions or endowments shall be through the process of public auction, except where a decision is taken at appropriate level, duly recording the reasons for deviating from the procedure. No proposal has emerged from the respondents for award of leasehold rights otherwise than through the medium of auction, for the land in question.

The respondents proposed to conduct auction for grant of leasehold rights, in the month of July 2004. The petitioner filed W.P.No.12991 of 2004 and obtained

interim orders. The writ petition was disposed of on 17.08.2004 directing that it shall be open to the petitioner to file an application for determination of his status as landless poor, as provided for under G.O.Ms.No.379, and till his status is determined the auction shall not be held. In fact, the petitioner never claimed the status of landless poor and the question of his filing the application before the first respondent for that purpose did not arise. There appears to have been some communication gap when the order in that writ petition came to be passed.

Be that as it may, the petitioner did not choose to file any application, as directed by this Court in the said writ petition. Having waited sufficiently, the respondents issued the auction notification dated 16.09.2004. The grounds pleaded by the petitioner in challenge to that notification are that he is inclined to enhance the lease amount from Rs.6,400/- to Rs.25,000/- and that he has invested huge amounts for developing the land. Even if these contentions are plausible, no relief can be granted to the petitioner, in view of the unequivocal consequences provided for under Section 82 of the Act and the Rules contained in G.O.Ms.No.379. The only exception carved out in the matter of termination of leases under Section 82 of the Act is in favour of the landless poor persons, as defined under explanation to that section. The petitioner does not at all fit into that category. Therefore, no exception can be taken to the course adopted by the respondents. In fact, the Devasthanam was subjected to heavy loss on account of the unlawful and illegal continuance of the petitioner over the land. No order passed by any authority has been placed before this Court to show that the lease in favour of the petitioner was extended beyond 1990. At any rate, the petitioner was already dispossessed from the land on 20.09.2004. This Court does not find any basis to suspect the clear and unequivocal statement made by the first respondent in his counter-affidavit.

Hence, the writ petition is dismissed and the interim order granted by this Court on 20.09.2004 is vacated. There shall be no order as to costs.

29.12.2004

Note:

Mark LR copies.

(BO)

ksld

To

1 The Assistant Commissioner, Endowments Department, Vijayawada, Krishna District

2 Two CCs. to the G.P. for Endowments, High Court of A.P.,

Hyderabad (OUT)

3 Two CD copies.